

1 Marc R. Ascolese, <[mascolese@sidley.com](mailto:mascolese@sidley.com)> (Bar No. 251397)  
2 SIDLEY AUSTIN LLP  
3 555 California Street, Suite 2000  
4 San Francisco, California 94104  
5 Telephone: (415) 772-1200  
6 Facsimile: (415) 772-7400

7 *Counsel for Plaintiff eBay Inc.*

8 NOTE: Additional counsel listed on signature page

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

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14 eBay Inc., ) No. 5:10-cv-5106-PSG (filed Nov. 10, 2010)  
15 )  
16 *Plaintiff,* )  
17 ) **FIRST AMENDED COMPLAINT FOR**  
18 vs. ) **DECLARATORY JUDGMENT**  
19 PartsRiver, Inc. and Kelora Systems, LLC, )  
20 )  
21 *Defendants.* )  
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1 Plaintiff eBay Inc. alleges as follows:

2 **THE PARTIES**

3 1. Plaintiff eBay Inc. (“eBay”) is a Delaware corporation having its principal place of  
4 business at 2065 Hamilton Avenue, San Jose, CA 95125.

5 2. On information and belief, Defendant PartsRiver, Inc. (“PartsRiver”) is a Delaware  
6 corporation having its principal place of business at 3155 Kearney Street, Suite 210, Fremont, CA  
7 94538.

8 3. On information and belief, Defendant Kelora Systems, LLC (“Kelora”) is a Delaware  
9 limited liability company having its principal place of business at 19925 Stevens Creek Boulevard,  
10 Suite 100, Cupertino CA 95014.

11 **NATURE OF THE ACTION**

12 4. This is a declaratory judgment action seeking a determination that eBay does not  
13 infringe at least reexamined claims 1 and 2 of U.S. Patent No. 6,275,821 under 35 U.S.C. § 271; that  
14 at least reexamined claims 1 and 2 of this patent are invalid under at least 35 U.S.C. §§ 102, 103,  
15 112, and/or 305; and/or that eBay has intervening rights to at least reexamined claims 1 and 2 of this  
16 patent under 35 U.S.C. §§ 252 and 307(b).

17 **JURISDICTION AND VENUE**

18 5. On information and belief, this Court has personal jurisdiction over PartsRiver  
19 because PartsRiver is doing business in, and has its principal place of business in, this Judicial  
20 District at 3155 Kearney Street, Suite 210, Fremont, CA 94538.

21 6. On information and belief, this Court has personal jurisdiction over Kelora because  
22 Kelora is doing business in, and has its principal place of business in, this Judicial District at 19925  
23 Stevens Creek Boulevard, Suite 100, Cupertino CA 95014.

24 7. This Court has subject matter jurisdiction over eBay’s causes of action asserted here  
25 pursuant to 28 U.S.C. § 1331 and 1338(a), because those claims arise under the patent laws of the  
26 United States, 35 U.S.C. §§ 101, *et seq.*, and under the Federal Declaratory Judgment Act, 28 U.S.C.  
27 §§ 2201 and 2202.

28 8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c).

1 **INTRADISTRICT ASSIGNMENT**

2 9. Pursuant to Civil Local Rule 3-2(c), this is an Intellectual Property Action that  
3 normally would be assigned on a district-wide basis. However, under Civil L.R. 3-12, this action is  
4 related to *PartsRiver, Inc., v. Shopzilla, Inc., et al.*, No. 4:09-cv-00811-CW and thus should be  
5 assigned to Judge Wilken in the Oakland Division.

6 **FACTUAL BACKGROUND**

7 10. U.S. Patent No. 6,275,821 (“the ’821 patent”), is entitled “Method and System for  
8 Executing a Guided Parametric Search,” and originally issued August 14, 2001.

9 11. The ’821 patent expires on October 14, 2014.

10 12. On information and belief, PartsRiver is and/or was the owner by assignment of the  
11 ’821 patent.

12 13. On information and belief, Kelora has at least some rights to the ’821 patent.

13 14. The first-named inventor of the ’821 patent is Mohamed Sherif Danish (“Sherif  
14 Danish”).

15 15. Sherif Danish lives in Cupertino, California.

16 16. Sherif Danish has referred to the ’821 patent as the “Step Search” patent.

17 17. On information and belief, after PartsRiver acquired ownership of the ’821 patent,  
18 Sherif Danish encouraged PartsRiver to enforce the ’821 patent.

19 18. For example, in August 2006, Sherif Danish wrote to Horacio Woolcott, the CEO of  
20 PartsRiver:

21 Horacio,

22 As promised, here is a partial list of companies that infringe on the Step Search patent.

23 Sherif

24 [www.yahoo.com](http://www.yahoo.com)

25 [www.circuitcity.com](http://www.circuitcity.com)

26 [www.officedepot.com](http://www.officedepot.com)

27 <http://www.newark.com/>

28 <http://catalog.graybar.com/>

[bhinone.farnell.com/](http://bhinone.farnell.com/)

<http://www.gcs.com/>

1           19.     In April 2007, Sherif Danish identified for PartsRiver the following companies as  
2 alleged “infringers” of the ’821 patent:

<b>Portals</b>
1) Yahoo
2) Amazon
3) Ebay
4) Google
5) MSN
<b>Software Search Vendors</b>
1) Endeca Technologies
2) Fast Search & Transfer
3) IBM
4) Autonomy
5) Entopia
6) Convera
7) Microsoft
8) Google
9) Coveo
10) dtSearch
11) Dieselpoint
12) Exalead
13) InQuira
14) Inxight Software
15) ISYS Software
16) Kaidara Software
17) Knova Software
18) Mercado
19) Nervana
20) Open Text
21) Oracle
22) PolySpot
23) Progress Software
24) Recommind

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25) S. L. I. Systems	
26) Thunderstone	
27) Vivisimo	
28) WCC	
29) WebSide Story	
30) X1 Technologies	
31) ZyLab	
<b>Retailers</b>	
Best Buy	
Circuit City	
10000 Others	

20. On information and belief, pursuant to a consulting agreement effective August 1, 2007, Sherif Danish agreed to help PartsRiver enforce the '821 patent in exchange for \$10,000 per month for the term of the agreement, plus 10% of the first \$100 million received as a result of any licenses, settlements, or judgments involving the '821 patent.

21. On October 3, 2007, PartsRiver filed a civil action in the Eastern District of Texas (No. 2:07-cv-440-DF) alleging that the following companies infringe the '821 patent: Shopzilla, Inc.; ValueClick, Inc.; PriceRunner Limited; Yahoo!, Inc.; PriceGrabber.com, Inc.; eBay Inc.; and Microsoft Corporation.

22. Claim 2 of the '821 patent depends from claim 1.

23. On February 18, 2008, PartsRiver contended that the following websites are operated by eBay and utilize search processes or methods which infringe upon both claims 1 and 2 of the '821 patent:

- www.shopping.com
- http://fr.shopping.com
- http://de.shopping.com
- http://uk.shopping.com
- http://au.shopping.com
- www.dealtime.com
- www.dealtime.com.uk
- www.ugenie.com

1 www.epinions.com

2 www.pricetool.com

3 www.express.ebay.com

4 24. On December 22, 2008, the United States Patent and Trademark Office (“USPTO”)  
5 determined that there was a substantial new question of patentability affecting claims 1 and 2 of the  
6 ’821 patent and thus ordered an *ex parte* reexamination of those claims (Reexamination Control No.  
7 90/009,316).

8 25. On January 30, 2009, the Court in the Eastern District of Texas determined that “the  
9 Northern District of California would clearly be a more convenient venue” and thus transferred  
10 PartsRiver’s action to this Court, where it was assigned to Judge Wilken as Civil Action No. 4:09-  
11 cv-00811-CW.

12 26. On May 28, 2009, eBay, along with other defendants in that case, filed with Judge  
13 Wilken a motion for summary judgment of non-infringement and invalidity of claims 1 and 2 of the  
14 ’821 patent.

15 27. On June 18, 2009, an Examiner at the USPTO issued an Office Action finally  
16 rejecting claims 1 and 2 of the ’821 patent under 35 U.S.C. § 102(b) as being clearly anticipated by  
17 Granacki et al., *A Component Library Management System and Browser*, ISI Research Report,  
18 ISI/RR-93-386, USC/Information Sciences Institute, April, 1993.

19 28. On August 21, 2009, Judge Wilken granted summary judgment that claims 1 and 2 of  
20 the ’821 patent were invalid under 35 U.S.C. § 102(b) due to the on-sale bar.

21 29. On September 18, 2009, PartsRiver appealed the Examiner’s final rejection of claims  
22 1 and 2 to the Board of Patent Appeals and Interferences (“BPAI”).

23 30. On September 18, 2009, PartsRiver appealed Judge Wilken’s summary judgment of  
24 invalidity to the United States Court of Appeals for the Federal Circuit.

25 31. The notice of appeal that PartsRiver filed on September 18, 2009, was signed by the  
26 firm Manatt, Phelps & Phillips, LLP.

27 32. On January 29, 2010, PartsRiver filed a brief in the Federal Circuit arguing that Judge  
28 Wilken’s summary judgment of invalidity should be reversed.

1           33.     The brief that PartsRiver filed in the Federal Circuit was signed by Manatt, Phelps &  
2 Phillips, LLP.

3           34.     On April 14, 2010, eBay, along with other defendants in that case, filed a brief in the  
4 Federal Circuit arguing that Judge Wilken’s summary judgment of invalidity should be affirmed.

5           35.     On information and belief, in or around May 2010, Sherif Danish became the CEO of  
6 PartsRiver.

7           36.     On May 20, 2010, while its appeal before the BPAI was pending, PartsRiver  
8 requested entry of an amendment to claim 1, as well as entry of a new claim 9. In its remarks  
9 accompanying the amendment, PartsRiver stated:

10                   The amendment of claim 1 presented herein adjusts the claim language of  
11 claim 1 to correspond to that of allowed claim 9.<sup>11</sup> Claim 1 is now believed to  
12 reflect, albeit explicitly, the legal scope of claim 1 as previously issued. As such,  
13 although the text of claim 1 has been altered by amendment, the claim scope is  
legally identical to that of originally issued claim 1. This change in language has  
been adopted for the sole purpose of terminating the present reexamination to  
avoid lengthy appeal proceedings.

14           37.     On June 24, 2010, the Examiner dismissed the appeal to the BPAI and issued a  
15 Notice of Intent to Issue Reexamination Certificate (“NIRC”) stating that the amended claim 1 and  
16 the new claim 9 were allowable.

17           38.     On June 29, 2010, the domain name “KELORA.COM” was registered.

18           39.     Sherif Danish in Cupertino, California was listed as the “Technical Contact” and the  
19 “Administrative Contact” for “KELORA.COM.”

20           40.     The webpage at <http://www.kelora.com/> includes the following statement: “Kelora  
21 develops the most advanced product search technologies. Our patented, award winning Step Search  
22 ® technology is the industry norm for narrowing search results.”

23           41.     The webpage at [http://www.kelora.com/Contact\\_US.html](http://www.kelora.com/Contact_US.html) provides the following  
24 contact information:

25                   Kelora Systems LLC  
26                   19925 Stevens Creek Blvd #100  
27                   Cupertino, CA 95014  
28                   408-518-2055

42.     On September 28, 2010, Kelora was formed as a Delaware limited liability company.

1           43.     On information and belief, on or about October 7, 2010, PartsRiver assigned at least  
2 some of its rights in the '821 patent to Kelora.

3           44.     Neither PartsRiver, Kelora, nor Manatt, Phelps & Phillips, LLP ever disclosed to  
4 eBay that any rights in the '821 patent had been assigned to Kelora.

5           45.     On October 15, 2010, PartsRiver filed a motion in the Federal Circuit to dismiss its  
6 appeal and to vacate Judge Wilken's judgment of invalidity.

7           46.     The motion that PartsRiver filed in the Federal Circuit was signed by Manatt, Phelps  
8 & Phillips, LLP.

9           47.     The motion that PartsRiver filed in the Federal Circuit did not mention Kelora.

10          48.     On October 22, 2010, eBay, along with other defendants in that case, filed a brief  
11 opposing PartsRiver's motion to vacate Judge Wilken's judgment of invalidity.

12          49.     On October 27, 2010, PartsRiver filed a reply brief in the Federal Circuit in support  
13 of its motion to dismiss the appeal and to vacate Judge Wilken's judgment of invalidity.

14          50.     The reply brief that PartsRiver filed in the Federal Circuit was signed by Manatt,  
15 Phelps & Phillips, LLP.

16          51.     The reply brief that PartsRiver filed in the Federal Circuit did not mention Kelora.

17          52.     On November 2, 2010, the USPTO issued a reexamination certificate for the '821  
18 patent reflecting: the allowed amendment to claim 1, the confirmation of unamended dependent  
19 claim 2, and the allowed new claim 9.

20          53.     The reexamination certificate lists PartsRiver as the assignee.

21          54.     On information and belief, PartsRiver contends that the scope of reexamined claims 1  
22 and 2 of the '821 patent is legally identical to that of originally issued claims 1 and 2 of the '821  
23 patent.

24          55.     On information and belief, Kelora likewise contends that the scope of reexamined  
25 claims 1 and 2 of the '821 patent is legally identical to that of originally issued claims 1 and 2 of the  
26 '821 patent.

27          56.     On November 8, 2010, Kelora filed a civil action in the Western District of  
28 Wisconsin (No. 3:10-cv-683-SLC) alleging that the following companies infringe the '821 patent:



1 Target Corporation; OfficeMax Incorporated; ShopKo Stores Operating Co., LLC; Briggs & Stratton  
2 Corporation; Chelsea & Scott, Ltd., d/b/a One Step Ahead & Leaps And Bounds; National Business  
3 Furniture, LLC' BuyOnlineNow, Inc.; Rockler Companies, Inc.; IDW, LLC, d/b/a ID Wholesaler; 1-  
4 800-Flowers.com, Inc.; PC Connection, Inc.; Eastbay, Inc.; and Mason Companies, Inc., d/b/a  
5 Maryland Square.

6 57. Kelora included the following allegation in its complaint in the Western District of  
7 Wisconsin: "Kelora is the owner by assignment of all right, title and interest in U.S. Patent No.  
8 6,275,821 ("821 patent'), entitled, 'Method and system for executing a guided parametric search,'  
9 which was duly and properly issued by the U.S. Patent & Trademark Office on August 14, 2001."

10 58. Kelora included the following allegation in its complaint in the Western District of  
11 Wisconsin: "Defendants, and each of them, have infringed and continue to infringe the '821 patent  
12 by, inter alia, making and using parametric search systems, including web-based parametric search  
13 systems, and performing parametric searches that infringe the '821 patent."

14 59. The complaint filed by Kelora in the Western District of Wisconsin lists Manatt,  
15 Phelps & Phillips, LLP as attorneys for Kelora in that action.

16 60. Based on the foregoing, there is a substantial controversy between (i) PartsRiver  
17 and/or Kelora and (ii) eBay, of sufficient immediacy and reality, to warrant the issuance of a  
18 declaratory judgment with respect to non-infringement, invalidity, and/or intervening rights with  
19 respect to at least reexamined claims 1 and 2 of the '821 patent.

20 **COUNT I**

21 **DECLARATORY JUDGMENT OF NONINFRINGEMENT**

22 61. eBay repeats and incorporates by reference the allegations of paragraphs 1–60 in their  
23 entirety.

24 62. eBay has not infringed, and is not now infringing, at least reexamined claims 1 and 2  
25 of the '821 patent.

1 **COUNT II**

2 **DECLARATORY JUDGMENT OF INVALIDITY**

3 63. eBay repeats and incorporates by reference the allegations of paragraphs 1–60 in their  
4 entirety.

5 64. At least reexamined claims 1 and 2 of the '821 patent are invalid.

6 **COUNT III**

7 **DECLARATORY JUDGMENT OF INTERVENING RIGHTS**

8 65. eBay repeats and incorporates by reference the allegations of paragraphs 1–60 in their  
9 entirety.

10 66. The scope of reexamined claim 1 of the '821 patent is not legally identical to the  
11 scope of any original claim of the '821 patent.

12 67. The scope of reexamined claim 2 of the '821 patent is not legally identical to the  
13 scope of any original claim of the '821 patent.

14 68. Under 35 U.S.C. § 252, ¶ 1 & § 307(b), PartsRiver may not bring an action against  
15 eBay for causes arising before November 2, 2010, with respect to at least reexamined claims 1 and 2  
16 of the '821 patent.

17 69. Under 35 U.S.C. § 252, ¶ 1 & § 307(b), Kelora may not bring an action against eBay  
18 for causes arising before November 2, 2010, with respect to at least reexamined claims 1 and 2 of the  
19 '821 patent.

20 70. Under 35 U.S.C. § 252, ¶ 2 & § 307(b), eBay is entitled to absolute intervening rights  
21 with respect to at least reexamined claims 1 and 2 of the '821 patent.

22 71. Under 35 U.S.C. § 252, ¶ 2 & § 307(b), eBay is entitled to equitable intervening  
23 rights for the protection of investments made or business commenced before November 2, 2010,  
24 with respect to at least claims 1 and 2 of the '821 patent.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, eBay prays for the following relief:

27 A. A declaration that eBay has not infringed and is not infringing at least  
28 reexamined claims 1 and 2 of the '821 patent;

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B. A declaration that at least reexamined claims 1 and 2 of the '821 patent are invalid;

C. A declaration that PartsRiver may not bring an action against eBay for causes arising before November 2, 2010, with respect to at least reexamined claims 1 and 2 of the '821 patent;

D. A declaration that Kelora may not bring an action against eBay for causes arising before November 2, 2010, with respect to at least reexamined claims 1 and 2 of the '821 patent;

E. A declaration that eBay is entitled to absolute intervening rights with respect to at least reexamined claims 1 and 2 of the '821 patent;

F. A declaration that eBay is entitled to equitable intervening rights with respect to at least reexamined claims 1 and 2 of the '821 patent;

G. An order declaring that eBay is a prevailing party and that this is an exceptional case, awarding eBay its costs, expenses, disbursements, and reasonable attorneys' fees under 35 U.S.C. § 285 and all other applicable statutes, rules, and common law;

H. That PartsRiver and/or Kelora be ordered to pay all costs associated with this action; and

I. That eBay be granted such other and additional relief as the Court deems just and proper

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Dated: December 21, 2010

By: /s/ Marc R. Ascolese

Marc R. Ascolese (Bar No. 251397)  
<[mascolese@sidley.com](mailto:mascolese@sidley.com)>  
SIDLEY AUSTIN LLP  
555 California Street, Suite 2000  
San Francisco, California 94104  
Telephone: (415) 772-1200  
Facsimile: (415) 772-7400

David T. Pritikin  
<[dpritikin@sidley.com](mailto:dpritikin@sidley.com)>  
Richard A. Cederoth  
<[rcederoth@sidley.com](mailto:rcederoth@sidley.com)>  
SIDLEY AUSTIN LLP  
One S. Dearborn Street  
Chicago, Illinois 60603  
Telephone: (312) 853-7000  
Facsimile: (312) 853-7036

Theodore W. Chandler (Bar No. 219456)  
<[tchandler@sidley.com](mailto:tchandler@sidley.com)>  
SIDLEY AUSTIN LLP  
555 West Fifth Street, Suite 4000  
Los Angeles, California 90013  
Telephone: (213) 896-6000  
Facsimile: (213) 896-6600

<[SF-PartsRiver-MS-eBay@sidley.com](mailto:SF-PartsRiver-MS-eBay@sidley.com)>

*Counsel for Plaintiff eBay Inc.*